

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8391 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? No.

2. To be referred to the Reporter or not? No. :

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? No.

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? : NO  
No.

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LABHKUNVAR H PANDYA, WD/O HARILAL NARANJI PANDYA

Versus

JAMNAGAR MUNICIPAL CORPORATION

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Appearance:

MR AM MEHTA for Petitioner  
MR JR NANAVATI for Respondent No. 1  
MR KC SHAH AGP for Respondent No. 2

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 02/12/1999

ORAL JUDGEMENT

This petition has been filed for quashing the impugned decision communicated on 27-5-1993 Annexure-J and for a direction to the respondents to give the petitioner the benefits of pension scheme as revised by the Government from time to time and to pay the petitioner pension, family pension regularly every month as per the Government Pension Rules revised from time to time and to give the petitioner the arrears of pension with effect from 13-5-1978 after adjusting the amount of

contributory provident fund which was paid to the petitioner at the time of death-cum-retirement.

2. The petitioner's husband Harilal Naranji Pandya had rendered about 30 years' service in the - respondent no. 1 and during the service he met with an accident and died subsequently on 13-5-1978. The petitioner received the contributory provident fund amount and gratuity from the respondent no. 1 as a widow of the employee of the respondent no. 1. However, the petitioner was not given any benefit of the pension scheme even though the petitioner applied for the same in spite of the respondent - corporation has decided to apply the pension scheme to the Government Servants by the resolution dated 24-3-1974. The petitioner applied for the family pension in a prescribed form on 30-1-1990 and thereafter by the application dated 5-2-1990. She has also made several application for the same purpose. But the respondents refused the petitioner to grant the benefit of pension scheme by the letter dated 27-5-1993, Annexure-J and hence this petition.

3. It is stated that the award is passed by the Industrial Tribunal in Reference No. 39/1973 between the Jamnagar Nagarpalika Vs. Workmen Union on 15-5-1974 wherein the certain observations have been made which read as under :

"After hearing of this Reference the Municipality by its General Board Resolution No. 1306 dated 24-3-1974 has resolved to adopt all the amendments and modifications made by the State Government in Pension-cum-Gratuity Scheme for its employees and it has also resolved to adopt such changes made by the State Government in Pension-cum-Gratuity Rules from time to time. Thus, the Municipality has practically accepted demand no. 9 and as such nothing remains to be done on this question. I would therefore direct the Municipality to follow its General Board Resolution No. 1306 dated 24-3-1974 in the matter of Pension-cum-Gratuity Rules and benefits of the changes effected by the State Government in such rules shall also be given to the employees of the Municipality."

4. However, the respondent Corporation has neither complied with the said observations made in the aforesaid award nor option was given to the employees under the Pension Rules revised by the Government from time to time. By passing another resolution dated 18-1-1982 to

the effect that the Pension-cum-Gratuity Scheme was to be given effect from from 1-1-1980 and it is also stated that certain persons were given the benefits of the said resolution in pursuance of the order of this Court passed in Spl. C.A. No.3060/89. But remaining persons whose petition was dismissed filed L.P.A. No. 308/90. The Division Bench of this Court in L.P.A. No. 308/90 has held as under:

"The settlement arrived at between the employees'

Union and the respondent Corporation was not confined to the employees who has raised the Industrial Dispute. Reference was withdrawn as under the settlement arrived at between the Employees" Union and the Respondent-Corporation it was agreed that all the employees were covered by the Pension Scheme with effect from April 4, 1994. The appellants had also not exercised option within specified time. But merely because they did not join the Industrial dispute raised by other employees it could not be said that they are not similarly situated. There does not seems to be any reason or justification to deny them the benefit of pension scheme which is made applicable to other employees"

5. Learned counsel for the petitioner submitted that the petitioner's claim is completely covered by the decision of this Court in Special Civil Application No. 3060/89 and L.P.A. 308/90 as the petitioner's husband died on 13-5-1978. The petitioner was entitled to the benefits of the said award and the respondent Corporation was required to be given the benefits of the pension scheme prescribed for the Government Employees as revised from time to time. But the petitioner has not been given any benefits by the respondent Corporation. The respondent Corporation has illegally and arbitrarily refused to grant the benefits of pension scheme though the other persons similarly situated have been given the benefits of the pension scheme. It is also stated that the petitioner is prepared to refund the amount of contributory provident fund as required by the respondent Corporation and the same can be adjusted against the arrears of pension to which the petitioner is entitled as per the Rules. It is extremely difficult for the petitioner who is aged 65 years widow of the employee of the respondent Corporation to maintain herself and hence this petition.

6. The respondent Corporation has filed an

affidavit-in-reply stating therein that the revised pension scheme which came into existence in the year 1972 was not applicable to the municipal employees. The General Board of the Municipality by the resolution No. 1306 dated 24-3-1974 accepted and applied pension scheme of the Government and accordingly the award was given by the Industrial Tribunal. The husband of the petitioner did not ask for the pension scheme as he found that the contributory provident scheme was more beneficial to him. The petitioner's husband died on 13-5-1978 and after lapse of long time the present petitioner has no right to invoke extra ordinary jurisdiction of this Court for the pension scheme. The husband of the petitioner having accepted the benefit of the provident fund scheme which he has opted, the petitioner has no right now to enforce the claim by filing writ petition. The petitioner's husband during the life time had taken the benefits of the provident fund scheme and had opted for the same voluntarily. By the resolution No. 43 dated 18-1-1982 Municipal Corporation resolved to give the benefits of the pension scheme to those employees who have retired after 1-1-1980. In that connection, the petitioner had asked for the said benefits at late stage. Hence she has no right to claim by way of filing this writ petition. If the petitioner was aggrieved there is an alternative remedy available under the Industrial Disputes Act and it is open for the petitioner to apply for Industrial Reference. During the life time the petitioner's husband opted for the provident fund scheme which was beneficial to him and the benefits under the said scheme have already been given and the petitioner at this stage after lapse of so long time cannot claim the benefits of pension scheme. Therefore, the claim of the petitioner is barred by gross delay, estoppel and latches. It is stated that the decision of this Court in L.P.A. No. 308/90 is not applicable to the petitioner's claim.

7. Heard the learned counsel for the petitioners. Learned counsel for the petitioner submitted that the Government has passed Resolution dated 19-5-1989 whereby the Government of Gujarat introduced the Family Pension Scheme 1972 under the Government Resolution dated 1-1-1972 for the benefits of the State Government employees who were in service on 1-6-1971 or retired thereafter. Under this scheme, the widow/spouse was entitled to get family pension till her death or remarriage whichever was earlier and failing pension upto the age of 18 and 21 respectively for the minor children. The scheme was contributory was in nature in that the Government employees eligible to the grant of the scheme was required to surrender a portion of gratuity equal to

his two months pay subject to the minimum of Rs.8,500/which was subsequently reduced to Rs.5,000/under Government Resolution dated 29-10-1975. The Government employees who did not opt for the New Family Pension Rules, 1950 under which the family pension was admissible for a minimum period of ten years after the death of the Government employees were also entitled. Under the Government Resolution No.FPS-1077-2485-J dated 17-10-1977, the Government decided to do away with the provisions of recovery of two months pay from the amount of gratuity payable to the Government Servants. These orders were made applicable to those who retired or died on or before 1-10-1977. However, the families of the Government servants who retired or died between 1-6-1971 and 1-10-1977, but who did not apply for the new Family Pension Scheme introduced vide Government Resolution dated 1-1-1972 by not surrendering portion of the gratuity equal to two months' pay, allowed the benefit of Government Resolution dated 17-10-1977. The learned counsel for the petitioner submitted that in the said G.R. the words "persons similarly situated" have been mentioned and that is also applicable to the employees of the respondent Corporation. The Government Servants and other persons who retired between 1-6-1971 to 1-10-1971 and who did not make the contribution shall be entitled to claim the benefits of the New Family Pension Scheme. "Similarly situated" words have been referred to from the judgment of this Court and the learned counsel for the petitioner submitted that "similarly situated" means that the persons working in the respondent - Municipality. The Government Resolutions also refers to the judgment of this Court wherein this Court has directed that the petitioners of that petition and widows and dependents of the retired Government servants and other persons to whom the benefits of the New Family Pension Scheme is applicable and who are similarly situated, meaning thereby the widows and dependents of the Government servants. During pendency of Letters Patent Appeal, the Government decided that the benefits of the new Family Pension Scheme, 1972 shall be extended prospectively in accordance with the judgment to all the petitioners, widows, dependents and eligible pensioners similarly situated with effect from 1-4-1989 onwards. The benefits of medical reimbursement and medical allowance will also be admissible with effect from 1-4-1989. The amount of family pension payable for the month of April, 1989 and onwards was directed to be paid after deduction of required amount for widow assistance, if any, paid under GR dated 13-1-1978. The applicants' applying for family pension under GR dated 1-4-1989 were not required to contribute two months' pay. and there was no demand for

refund of contributions already made by the Government Servants to be made shall be entertained by the Government. Certain directions were given for mode and computation of payment of pensionary benefits.

8. Learned counsel for the petitioner has also relied on the judgment dated 22-10-1999 passed by this Hon'ble Court in L.P.A. No. 308/90, wherein the pension scheme was made applicable to other employees of the respondent Corporation. The Employees' Union made several representations to the respondent Corporation to give its employees to such options and the respondent Corporation passed the resolution dated 18-1-1982 requiring its employees to exercise option as stated above. The said option was to be exercised on or before 1-5-1982. He has also referred to that certain widows of the employees were also given the benefits of the pensions scheme. In the said judgment it is also mentioned that the settlement arrived at between the Employees' Union and the respondent-Corporation was not confined to the employees who had raised the industrial dispute and that was applicable to all the employees to whom pension scheme was available with effect from 4-4-1974 and the appellants had not exercised their options within the specified period.

9. The question raised before the Division Bench of this Court was as to whether the appellants were entitled to the benefits of the pension scheme from the date earlier than 2-5-1983 and the appellants were entitled to the benefits of the pension scheme with effect from 2-5-1983. However, the appellants were also held liable to refund the contribution made by the respondent Corporation to the provident fund which they have already received and the said contribution was adjusted against the arrears of pension payable to the respondents. As such, the Division Bench of this Court had decided the aforesaid L.P.A. No. 308/90.

10. On the contrary, the learned counsel for the respondent Corporation took a stand that the petitioner is not entitled to any pensionary benefits or family pension or widow pension and he has also relied on the judgments of this Court in (i) judgment dated 5-5-97 in Sp.C.A. No. 1820/93 and (ii) judgment dated 25-10-99 in Spl. C.A.. No. 260/93 wherein it has been held that on the retirement of the petitioner he got all the benefits of the Contributory Provident Scheme without any objection or protest and till his death he has not made any claim in this respect either by raising industrial dispute or by filing civil suit or by filing the petition

before this Court and once he has accepted and has not prayed for shifting to the pension and D.C.R.G. Scheme during his service, the widow is estopped to raise or to make such claim before this Court. Right of the Family Pension to the widow flows from the right of her husband of pension and D.C.R.G. Scheme. When he has not opted the benefit of pension and D.C.R.G. Scheme, she is not entitled for this benefit. The applicant was satisfied with the benefits which were given to him of the Contributory Provident Fund Scheme etc. It is not permissible both legally as well as on equity to the widow to file this petition before this Court under Article 226 of the Constitution of India for these reliefs and it has been observed that the petition was filed after more than 15 years of death of her husband, the discretionary remedy cannot be permitted to be availed of by the petitioner.

11. In the other petition, the petitioners were getting the benefits of contributory provident scheme and they have taken all the benefits of that scheme on their retirement and have not raised any objection till 1993. Conduct of the petitioners to take benefits of the provident fund scheme and have not raised any voice for these years is sufficient ground for dismissal of the petition.

12. I have considered the rival contentions raised by the learned counsel for the petitioner and perused the relevant papers on record and I come to a conclusion that it is doubtful whether the employees of the respondent Corporation would be entitled to the benefits of decision of the Division Bench of this Court and resolution dated 19-5-1989. The employees of the respondent Corporation are not the Government servants as required by the resolution dated 19-5-1989 which is only applicable to the State Government Employees. It is nowhere stated in the said judgment that the respondent Corporation and that Corporation may be any other corporation. Secondly, the Government Resolution dated 19-5-1989 refers to only the families of the Government servants. Learned counsel for the petitioner could not satisfactorily established that the employees of the respondent Municipal Corporation are also the employees of the said Government. It is doubtful whether the aforesaid resolution will be applicable to the employees of the respondent Corporation. The husband of the petitioner was having two modes for receiving the retiral benefits, (i) for provident fund scheme and (ii) for the pensionary scheme. The husband of the petitioner had opted for the provident fund scheme and after death of the husband of

the petitioner, the petitioner also opted for contributory provident fund scheme and received the fund of the contributory provident fund. After more than 12 years she is making attempt to receive the benefits of the pension scheme which is not available to the petitioner. The petition has no merits and the same is liable to be dismissed in view of the decision of this Court relied on by the learned advocate for the respondent - Corporation.

13. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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/JVSatwara/